

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 96-0603 ITC

**Gross Income Tax
Calendar Year: 1994**

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ISSUE(S)

I. Gross Income – Allocation of income

Authority: 45 IAC 1-1-21

Taxpayer protests the allocation of income as shown on its books.

STATEMENT OF FACTS

Taxpayer, incorporated in New Jersey distributes and warehouses motion picture film. In April 1994, the company sold its distribution and warehousing business including associated fixed assets. Taxpayer retained the buildings from which it had conducted business and currently rents them to the purchaser of the business.

Taxpayer maintained a general ledger that segregated revenue and expenses among five distribution centers. The gain from the sale of the business was evenly allocated to each distribution center.

I. Gross Income – Apportionment

DISCUSSION

At issue is whether the department was correct in utilizing taxpayer's allocation of gain as shown on its general ledger.

Taxpayer chose to allocate the gain from the sale of its warehousing and distribution business evenly among five locations involved. Consequently, the department's auditor allocated the gross proceeds from the sale evenly among the five locations.

In its protest the taxpayer proposes that the gross receipts be based upon the three-factor allocation of revenue, payroll, and fixed assets over a three year average and adjust the allocating selling price downward. The department advised the taxpayer by letter dated July 24, 1997 that there is no provision in the Indiana Code and Regulations to apportion gross income and, to adjust the sale, proof must be provided concerning the selling price of Indiana property.

Taxpayer's CPA explained the method used to allocate the sales price upon which the department asked the taxpayer to provide a description and location of each asset sold. The letter advised the taxpayer to submit its legal position within thirty days and, if no response is received, the protest will be decided based upon information contained in the file.

The department finds that the allocation of gross income as shown in the taxpayer's records is appropriate as shown in the audit. Taxpayer has not provided proof that the allocation is in error, nor has he amended the various states' tax returns.

FINDING

Taxpayer's protest is denied.